

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

AGENDA REQUESTED: October 23, 2013

DATE OF REQUEST: October 4, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Joyce Spencer-Nelson, (512) 239-5017

CAPTION: Docket No. 2013-1509-MIS. Consideration of the adoption of revisions to *New Technology Implementation Grant Program: Guidelines for Grants (RG-484)*.

The New Technology Implementation Grant (NTIG) program is established under Texas Health and Safety Code (THSC), Chapter 391. The commission is to adopt guidelines and criteria consistent with the statutory requirements. The commission adopted the current NTIG guidelines in 2010. The revisions to the guidelines implement changes to THSC, Chapter 391, by House Bill (HB) 2446 and Senate Bill (SB) 1727, 83rd Texas Legislature, 2013.

Eligible project categories under the NTIG program include Advanced Clean Energy Projects as defined by THSC, Section 382.003. HB 2446 amended the definition of an Advanced Clean Energy Project to include projects involving natural gas. The revisions to the guidelines incorporate this change.

The eligible project categories also include New Technology Projects that reduce emissions of regulated pollutants from point sources. The original provisions in THSC, Section 391.002(b)(1), required that projects under this category involve capital expenditures that exceed \$500 million. SB 1727 removed the capital expenditure limitation. The revisions to the guidelines remove this requirement to be consistent with the statutory requirements. (Jody Ibarguen, Ross Henderson)

Steve Hagle, P.E.
Deputy Director

David Brymer
Division Director

Joyce Nelson
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 4, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2013-1509-MIS

Subject: Commission Approval for Adoption of Revisions to *New Technology Implementation Grants: Guidelines for Grants* (RG-484)

Background and reason(s) for the guideline revisions:

The Texas Commission on Environmental Quality (TCEQ or commission) administers the New Technology Implementation Grants (NTIG) program established under Texas Health and Safety Code (THSC), Chapter 391.

The eligible project categories include Advanced Clean Energy Projects, under THSC, §382.003. House Bill (HB) 2446, 83rd Texas Legislature, Regular Session, 2013, amended the definition of an Advanced Clean Energy Project to include projects involving natural gas.

The eligible project categories also include New Technology Projects that reduce emissions of regulated pollutants from point sources. The original provisions in THSC, §391.002(b)(1), required that projects under this category involve capital expenditures that exceed \$500 million. Senate Bill (SB) 1727, 83rd Texas Legislature, Regular Session, 2013, removed the capital expenditure limitation and authorized the commission to establish a minimum capital expenditure threshold for these projects.

In accordance with THSC, §391.003, the commission is to adopt grant guidelines and criteria consistent with the statutory requirements. The commission adopted the current NTIG guidelines in 2010.

Changes to *New Technology Implementation Grants: Guidelines for Grants* (RG-484) are proposed to implement the statutory changes.

Scope of the guideline revisions:

A.) Summary of what the revisions to the guidelines will do: The changes to the guidelines include adding natural gas to the list of eligible fuels for an Advanced Clean Energy Project and removing the requirement that a New Technology Project involve capital expenditures that exceed \$500 million.

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B.) Scope required by federal regulations or state statutes: The guideline revisions implement changes made to THSC, §382.003, by HB 2446, and changes made to THSC, §391.002(b)(1), by SB 1727.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff does not recommend additional changes beyond those required to implement the statutory requirements. Also, staff recommends that any minimum capital expenditure threshold for New Technology Projects, as authorized under the change to THSC, §391.002(b)(1), be set on a grant-round basis rather than establishing a set threshold in the guidelines.

Statutory authority:

The revisions to the guidelines are proposed under THSC, §391.003, which directs the TCEQ to adopt and revise guidelines and criteria for the NTIG program as necessary to improve the ability of the plan to achieve its goals.

Effect on the:

A.) Regulated community: Owners of stationary sources that qualify as an Advanced Clean Energy Project and include natural gas as an eligible fuel may now be eligible to apply for a grant. Also, an owner of a facility that wishes to install emissions reduction systems that qualify as a New Technology Project that involves a capital expenditure of \$500 million or less may now be eligible to apply for a grant depending on any new capital expenditure threshold set by the commission on a grant-round basis.

B.) Public: The public will benefit from the emission reductions that result from this program.

C.) Agency programs: Program material will need to be revised to implement the changes to the program guidelines.

Stakeholder meetings:

No stakeholder meetings were held regarding the changes to the guidelines.

Public comment:

The proposed revisions to the guidelines were not made available for public comment.

Potential controversial concerns and legislative interest:

The changes to the program guidelines are minimal and implement statutory changes to the program. The guideline changes are not expected to generate any controversy.

Commissioners

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Do these revisions to the guidelines affect any current policies or require development of new policies?

If the guidelines are approved, program materials and application forms will need to be updated to reflect the changes.

What are the consequences if the guideline revisions do not go forward? Are there alternatives to revising the guidelines?

Without the adoption of these guideline changes, the NTIG program guidelines would not be consistent with the statutory provisions. Grants could not be awarded under the NTIG program until the changes are adopted. Alternatives to adopting the revised guidelines would be to delay adoption and delay any new grant rounds.

Agency contacts:

Jody Ibarguen, NTIG Coordinator, Air Quality Division, (512) 239-4954

Betsy Peticolas, Staff Attorney, Environmental Law Division, (512) 239-1439

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Tucker Royall
Office of General Counsel

New Technology Implementation Grant Program

Guidelines for Grants

Prepared by
Air Quality Division

RG-484
Draft for Commission approval
July 2013

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Chapter 1

Summary

These guidelines contain the criteria for grants under the Texas New Technology Implementation Grant (NTIG) program, authorized under Texas Health and Safety Code Chapter 391 (THSC 391), Subtitle C, Title 5.

Along with all applicable statutory provisions, NTIG recipients must adhere to the criteria herein.

The Texas Commission on Environmental Quality (TCEQ) may also establish more specific criteria consistent with these requirements through requests for grant applications (RFGAs), contracts, or other funding mechanisms.

History of Program

In 2009, House Bill (HB) 1796, 81st Texas Legislature, authorized the TCEQ to administer the NTIG program. These guidelines establish the standards and criteria for grants issued under the NTIG program as administered by the TCEQ.

In 2013, HB 2446, 83rd Texas Legislature, Regular Session, amended the definition of an Advanced Clean Energy Project to include projects involving natural gas. In addition, Senate Bill 1727, 83rd Texas Legislature, Regular Session, removed the requirement that an Advanced Clean Energy Project involve capital expenditures that exceed \$500 million to be eligible under the NTIG program.

Purpose

The primary objective of the program is to offset the incremental cost of emission reductions from facilities and other stationary sources in Texas [THSC 391.002(a)].

Funding

This program is funded through revenue from the Texas Emissions Reduction Plan (TERP) fund (THSC 386.251). The fund consists of fees and surcharges established by the Texas Legislature. [Texas Health and Safety Code 386.252(a)(2) currently appropriates 10 percent of the TERP fund to the NTIG program.]

The amount of funds available for grants during each year may vary depending upon the cash flow to the program, the amount of revenues received, appropriations made to the program, and reallocations of TERP funds pursuant to THSC 386.252 (b). The TCEQ will periodically issue notices and information regarding the grants, including the amount of funds available.

How to Contact Us

Anyone interested should check our website for information about the grant program. The NTIG web page at <www.terpgrants.org> contains links to this document and application forms, as well as other information that may be helpful to a potential applicant.

If you are unable to access the website or you want additional information, the staff at the TCEQ is available to answer questions about this program. If you are unclear as to whether your proposed project would qualify for a grant, please feel free to contact us to discuss the project.

You may contact the program by calling 512-919-TERP (8377), 8 a.m.–5 p.m., Monday-Friday. You may contact us by mail at:

Implementation Grants Section, MC 204
Air Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

You may also contact us by e-mail at <terp@tceq.texas.gov>.

The EPA offers several programs to assist the public and private sectors in developing and commercializing new environmental technologies, including testing protocols. More information is available through the EPA at <www.epa.gov/etop/>.

Chapter 2

Glossary

Terms as they are defined in THSC 386 and TCEQ rules (30 TAC 114.620) apply to this program, as well as terms further defined below.

advanced clean energy. Any project for which an application for a permit or for an authorization to use a standard permit, under chapter 382 of the Texas Health and Safety Code, is received by the commission on or after January 1, 2008, and before January 1, 2020, and meets all requirements of THSC 382.003 (1-a) (A–C).

best available control technology (BACT). An emission limitation based on the maximum degree of reduction of each pollutant subject to regulation, emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. Industry-specific BACTs are available online at <www.tceq.state.tx.us/goto/bact> or by contacting the APD at 512-239-1250. [42 USC 7479(3)]

implementation plan. Plan for the installation and operation of emissions-reduction technologies.

cost-effectiveness. Money spent (in dollars) divided by the total reduced emissions (in tons) attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money are annualized using a time value of public funds or discount rate determined for each project by the TCEQ, taking into account the interest rate on bonds, interest earned by state funds, and other factors the TCEQ considers appropriate. The current discount rate used to determine cost-effectiveness is 3 percent per year.

emission factor. A representative value that relates the quantity of a pollutant released to the atmosphere to an activity associated with the release of that pollutant.

EPA. The U.S. Environmental Protection Agency.

facility. A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility. [THSC 382.003(6)]

incremental cost. The cost of a project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business. It may include added lease or fuel costs, as well as additional capital costs.

new technology. Emissions control technology that results in emissions reductions that exceed state or federal requirements in effect at the time of submission of an NTIG application. [THSC 391.001(5)]

notice to proceed. A written notice from the TCEQ to a grant recipient confirming that adequate funding is available to support the grant agreement.

person. Not only an individual, but also a corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

public financial assistance. Tax credits or deductions, financial funding, or other financial incentives to a person by government, whether county, city, state, or federal, such as a property-tax reduction or a grant.

regulated pollutant. A pollutant subject to federal regulation under new source review, including any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such a pollutant identified by the EPA, or others based on standards of the federal Clean Air Act, sections 108, 111, and 112, and Title VI.

renewable energy. Energy generated from resources that are naturally replenished (such as sunlight, wind, rain, tides, and geothermal heat).

stationary source. Generally, any source of an air pollutant except those emissions resulting directly from an internal combustion engine used for transportation purposes or from a non-road engine or non-road vehicle as defined in section 7550 of title 42 of the U.S. Code (Clean Air Act, Title II, Section 216).

testing protocol. A written document detailing how, when, and where testing of new technologies will be conducted. Potential applicants should review the EPA's criteria for testing new technologies.

Chapter 3

Eligibility Requirements

Eligible Applicants

The primary objective of the NTIG program is to offset the incremental cost of emissions reductions of pollutants from facilities and other stationary sources in Texas.

Owners or operators of stationary sources that emit pollutants, or of electricity storage projects related to renewable energy, may apply for a grant. Only applicants in Texas are eligible for funding under the program. All applicants must certify compliance with all applicable Texas laws.

Each proposed new technology applicant will need to demonstrate the projected potential for reduced emissions and the cost-effectiveness of the technology once it has been implemented; the potential for the technology to contribute significantly to air quality goals; and a substantial implementation plan.

The NTIG program will evaluate proposals according to the selection criteria in the request for grant applications. The criteria may focus on the emission reduction potential, while remaining neutral as to the type of technology proposed, or may target particular types of promising technologies.

Applicants will be required to submit the following (if applicable):

- articles of incorporation
- authorization to sign grants or contracts
- evidence of required insurance
- resumes or qualifications of all principal staff involved in the project
- an implementation plan
- a project plan (including drawings, photos, etc., to clarify the project)
- a project schedule (including a schedule of deliverables)
- a subcontracting plan
- a detailed budget

Eligible Project Categories

Activities eligible for funding under this program are limited to emissions reductions in Texas. Activities that may be eligible under this program are outlined below. The TCEQ may more narrowly define or limit the types of eligible activities for a particular funding period.

Activities eligible for funding are those that implement new technologies to reduce emissions from stationary sources:

1. Advanced Clean Energy Projects as defined by THSC 382.003 for new or modified sources, e.g.:
 - Projects that involve the generation of electricity using the following fuels:
 - coal
 - biomass
 - petroleum coke
 - solid waste
 - **natural gas**
 - fuel cells which use derived hydrogen
 - Creation of liquid fuel outside of the existing fuel production infrastructure while co-generating electricity
2. New technology projects that reduce emissions of regulated pollutants **[and involve capital expenditures that exceed \$500 million]**
3. Electricity storage projects related to renewable energy, such as:
 - compressed-air energy storage
 - pumped hydropower
 - sodium-sulfur storage batteries
 - energy-retaining flywheels
 - lithium-ion batteries

The TCEQ may more narrowly define or limit the types of eligible activities for a particular funding period.

Chapter 4

Application and Award Procedures

How to Apply

The TCEQ will issue a request for grant applications periodically and indicate the dates that project selections will be made. Copies of the RFGAs and the necessary application forms will be available on the TCEQ's NTIG web page at <www.terpgrants.org> and directly from the TCEQ.

To find out more or to obtain copies of the application forms, see <www.terpgrants.org>. You may also contact the TCEQ directly to discuss your potential project. Program staff members may be reached at 512-919-TERP (8377).

Apply for each distinct project separately. Costs should be broken down so that partial funding could be considered for any grant. Please enter all necessary information onto the application forms in accordance with the instructions provided with the forms. Incomplete applications may delay the review process or be deemed ineligible or unresponsive. The required number of copies of the application and all necessary attachments should be submitted to the following address:

(Regular Mail)	New Technology Implementation Grants Program Implementation Grants Section, MC 204 Texas Commission on Environmental Quality P.O. Box 13087 Austin, TX 78711-3087
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(Express Mail)	New Technology Implementation Grants Program Implementation Grants Section, Bldg F Texas Commission on Environmental Quality 12100 Park 35 Circle Austin, TX 78753
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Project Review

Initial Review

The TCEQ will review the application for completeness. If the application is found to be incomplete or ineligible for funding during initial review, the TCEQ will notify the applicant. TCEQ staff members will provide details about what is missing from the application or why the proposed project is not eligible for funding.

Project Evaluation

The TCEQ will evaluate properly completed applications according to criteria established in these guidelines and the RFGA and determine the funding eligibility of each activity included in the project application.

An application for a technology grant awarded under the New Technology Implementation Grants program, per Chapter 391 of the Texas Health and Safety Code, must show reasonable evidence that the proposed technology project will reduce emissions, that the proposed project is cost effective, and that the applicant has provided a strong implementation plan in the application.

TCEQ will consider in each application:

- the projected potential for reduced emissions of regulated pollutants;
- project maturity;
- cost-effectiveness of emissions reduction;
- potential air quality benefit;
- strength of the implementation plan;
- other environmental impacts;
- strength of the project team;
- project timeline or schedule;
- potential funding from other sources; and
- the uniqueness of the plan or product being considered for funding to offer long term environmental benefits.

If the TCEQ requires additional information to complete or review a submitted application, then the applicant may be asked to submit additional or supporting documentation within a reasonable set time period. Substantially incomplete applications or those for which the requested additional information is not submitted

will be deemed incomplete or unresponsive. Incomplete applications will receive a letter of ineligibility and will not be considered for grant funding.

Testing Protocol

If the applicant submits testing results or proposes to test equipment, as part of the application, the TCEQ will require that testing protocols be included in the application. Testing may include, but is not limited to, stack sampling, continuous emissions monitoring, or both.

The testing protocol will be reviewed and determined acceptable by the appropriate community or authority (e.g., the EPA). However, its inclusion in the application will allow the TCEQ to facilitate acceptance of an applicable test protocol in parallel with the grant negotiations and grant award and help minimize the time lapse before testing can begin.

Testing protocols must be developed considering a broad range of interests (the original equipment manufacturer, the developer of the new technology, testing facilities or installers of the new equipment, etc.) that must reach agreement about how the test will be conducted.

The first part is the initial readings or analysis before and after the new technology is applied. The second part is durability testing, demonstrating how long the new technology will last. The end of the process is a consensus-developed final report presenting all of the data, including the facilities and industries that would experience similar results. An acceptable written testing protocol initiates the process and carries it through to the final report. This testing data and final report will be sent as documentation to the EPA for determination of emission reduction credits.

There are many companies in the U.S. that have the capability of performing the full range of testing that is required to evaluate emissions from stationary sources.

Project Selection

Project selections will be made using ranking and scoring procedures that will be explained in the RFGA. In general, the selection priorities may include priority funding among different types of technology, the maturity of the project, and air quality benefits. TCEQ executive management or their designee will make the final project selections.

Awarding of Grants and Contracting

Projects selected for funding will be awarded a grant, **not to exceed 50 percent of the implementation costs**, through the execution of a contract between the recipient and the TCEQ. If necessary, the grant management staff will coordinate with the recipient on any additional information necessary to complete the contract, including the scope of work and budget. All grant recipients should review the contract language carefully before accepting and signing the contract.

Because the funding for this program is derived from revenue that is received throughout the year, all grant awards and contracts will be contingent upon the receipt of sufficient revenue to cover the grant. The TCEQ may issue grant contracts on a contingency basis, subject to an issuance of a notice to proceed once sufficient funds are available.

The applicant will need to sign the grant contract and return the document to the TCEQ for final signature and execution. A copy of the signed contract will then be provided to the grant recipient.

An application for a Texas payee identification number (PIN) will also be supplied to the grant recipient with the contract. This number must be assigned before the Texas comptroller will make payment from state funds. Potential applicants without a PIN should consider applying for one as soon as possible. A grant recipient that has not already been assigned a PIN will need to return a completed PIN application form to the TCEQ along with the signed contract. The TCEQ will forward the application to the comptroller so that the required number can be assigned. Lack of a PIN will not affect project evaluation or selection.

Chapter 5

Grant Administration

Reimbursement

Grant payments occur on a reimbursement basis, meaning that payment will be made after the eligible expense has been incurred and paid by the grant recipient. The grant recipient must request reimbursement of expenses by submitting a completed, original, signed TCEQ request for reimbursement (RFR). Each RFR must be accompanied by a properly completed financial status report (FSR) for each activity conducted under the overall project.

The grant contract and the reimbursement forms will include requirements for documentation of expenses. Copies of all purchase orders, receipts, and paid invoices for expenditures must be submitted with each RFR of payments. Documentation of paid expenses, including canceled checks, must be provided in accordance to the grant contract provisions. Documentation of any required insurance must be submitted in accordance with the requirements of the applicable grant contract.

Reporting

The grant recipient must submit a project status report monthly, or as specified by the contract and with each RFR, and will provide a final report upon completion of the overall project. The project status and final report will be posted on the TCEQ's website. Following TCEQ acceptance of the final report, the grantee will be required to continue submitting quarterly activity reports for at least five years. The information contained in the activity reports will be determined by the NTIG program based on the type of activities funded. Each report must clearly identify the project and be written so the average lay person can understand the project.

The TCEQ staff will review the forms and accompanying documentation. To be eligible for reimbursement, all expenses must meet all applicable requirements of the Uniform Grant Management Standards (UGMS), including allowable-cost principles set forth in Part III, Subpart C, section _22(b).

Forms

The TCEQ will supply the reimbursement and reporting forms to grantees, who should send all completed forms to:

(Regular Mail) New Technology Implementation Grants Program
Implementation Grants Section, MC 204
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

(Express Mail) New Technology Implementation Grants Program
Implementation Grants Section, Bldg F
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

Grant Adjustments and Authorizations

Grant recipients must complete the project according to the time lines established in the grant agreement. Recipients should request approval for adjustments to the schedule as needed, according to the provisions of the grant agreement; however, a thorough explanation is required as to why additional time is needed. The TCEQ will have sole discretion to approve any modifications to time lines. Any changes to the time line must be justified, since the project's timing is considered in application evaluation and selection. Consistent with the grant contract, the TCEQ may also choose to terminate a project early due to delays, particularly if the delays will put the project completion date past the end of the eligible funding period.

Once the grant contract is signed and the project begins, any desired changes to the grant agreement—including work activities, authorized representative, schedule, or budget—must be requested in writing to the TCEQ. In accordance with the grant agreement provisions, the TCEQ may approve any changes through an amendment to the contract. The TCEQ has the sole discretion to approve any changes to the contract. Instructions for budget changes will be included in the contract provisions. Applicants are encouraged to carefully analyze all costs in the grant application before execution of a contract.

Closeout Procedure and Release of Claims

Upon completion of the project, the grant recipient must submit an RFR and FSR for all remaining unreimbursed expenses, all required expense documentation, and a final project report. This documentation must be submitted no later than the deadline established in the grant contract.

The TCEQ must review and accept all deliverables due as part of the grant project before final reimbursement or closeout of the grant. The contract will contain provisions for the grantee to submit deliverables to the TCEQ for review and comment. Review and comment must be accounted for in the project time line and schedule. The grantee will also have a contractual obligation to respond to the TCEQ's review comments before finalizing reports or other deliverables.

The final FSR must include a completed and signed release of claims. Once it receives a release of claims form and the recipient has met all other contract requirements, the TCEQ will close out the grant contract.

The TCEQ will also complete a contractor evaluation in accordance with the provisions that will be outlined in the grant contract. The grant recipient will be notified of the results of the evaluation and will be given the opportunity to respond. This evaluation, which is required for all contracts administered by the TCEQ, is used to track the compliance and effectiveness of all TCEQ contractors and grant recipients.

ORDER ADOPTING GUIDELINES REVISIONS

Docket No. 2013-1509-MIS

On October 23, 2013, the Texas Commission on Environmental Quality (Commission) adopted revisions to the *New Technology Implementation Grants: Guidelines for Grants* (guidelines).

IT IS THEREFORE ORDERED BY THE COMMISSION that the revisions to the guidelines are hereby adopted. The Commission further authorizes staff to make any additional non-substantive changes to the guidelines necessary for final publication. The adopted revisions are incorporated by reference in this Order as if set forth at length verbatim in this Order.

The provisions of Texas Health and Safety Code, § 391.053, exempt revisions to the guidelines from rulemaking requirements of Chapter 2001, Government Code. This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

H.B. No. 2446

AN ACT

relating to the definitions of advanced clean energy projects and clean energy projects and to franchise tax credits for certain of those projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 490, Government Code, is transferred to Chapter 171, Tax Code, redesignated as Subchapter L, Chapter 171, Tax Code, and amended to read as follows:

SUBCHAPTER L. ~~[H. FRANCHISE]~~ TAX CREDIT FOR CLEAN ENERGY PROJECT

Sec. 171.651 ~~[490.351]~~. DEFINITION. In this subchapter, "clean energy project" has the meaning assigned by Section 120.001, Natural Resources Code.

Sec. 171.652. ~~[490.352. FRANCHISE]~~ TAX CREDIT FOR CLEAN ENERGY PROJECT. (a) The comptroller shall adopt rules for issuing to an entity implementing a clean energy project in this state a ~~[franchise tax]~~ credit against the tax imposed under this chapter. A clean energy project is eligible for a ~~[franchise tax]~~ credit only if the project is implemented in connection with the construction of a new facility.

(b) The comptroller shall issue a ~~[franchise tax]~~ credit to an entity operating a clean energy project after:

(1) the Railroad Commission of Texas has issued a certificate of compliance for the project to the entity as provided by Section 120.004, Natural Resources Code;

(2) the construction of the project has been completed;

(3) the electric generating facility associated with the project is fully operational;

(4) the Bureau of Economic Geology of The University of Texas at Austin verifies to the comptroller that the electric generating facility associated with the project is sequestering at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility; and

(5) the owner or operator of the project has entered into an interconnection agreement relating to the project with the Electric Reliability Council of Texas.

(c) The total amount of the ~~[franchise tax]~~ credit that may be issued to the entity designated in the certificate of compliance for a clean energy project is equal to the lesser of:

(1) 10 percent of the total capital cost of the project, including the cost of designing, engineering, permitting, constructing, and commissioning the project, the cost of procuring land, water, and equipment for the project, and all fees, taxes, and commissions paid and other payments made in connection with the project but excluding the cost of financing the capital cost of the project; or

(2) \$100 million.

(d) ~~[The amount of the franchise tax credit for each report year is calculated by determining the amount of franchise tax that is due based on the taxable margin generated by a clean energy project from the generation and sale of power and the sale of any products that are produced by the electric generation facility.]~~ The total [amount of the franchise tax] credit that a taxable entity may claim [claimed] under this section for a report, including the amount of any carryforward credit, [year] may not exceed the amount

of franchise tax due by the taxable entity for the report after any applicable tax credits [attributable to the clean energy project for that report year]. If a taxable entity is eligible to claim a credit that exceeds the limitation of this subsection, the taxable entity may carry the unused credit forward for not more than 20 consecutive reports. A carryforward is considered the remaining portion of the credit that the taxable entity does not claim in the current year because of the limitation.

(e) The entity designated in the certificate of compliance for a clean energy project may assign the credit to one or more taxable entities. A taxable entity to which the credit is assigned may claim the credit against the tax imposed under this chapter subject to the conditions and limitations of this subchapter.

(f) The comptroller may not issue a [franchise tax] credit under this section before the later of:

(1) September 1, 2018; or

(2) the expiration of an agreement under Chapter 313 regarding the clean energy project for which the credit is issued [2013. This subsection expires September 2, 2013].

SECTION 2. Section 382.003(1-a), Health and Safety Code, is amended to read as follows:

(1-a) "Advanced clean energy project" means a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis:

(a) a 99 percent or greater reduction of sulfur dioxide emissions;

(b) [or,] if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology requirements as determined by the commission;

(ii) on an annual basis:

(a) a 95 percent or greater reduction of mercury emissions; or

(b) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;

(iii) an annual average emission rate for nitrogen oxides of:

(a) 0.05 pounds or less per million British thermal units; ~~[or]~~

(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(C) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

SECTION 3. Section 120.001(2), Natural Resources Code, is amended to read as follows:

(2) "Clean energy project" means a project to construct a coal-fueled, natural gas-fueled, or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that will:

(A) have a capacity of at least 200 megawatts;

(B) meet the emissions profile for an advanced clean energy project under Section 382.003(1-a) (B), Health and Safety Code;

(C) capture at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility;

(D) be capable of permanently sequestering in a geological formation the carbon dioxide captured; and

(E) be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

SECTION 4. Section 120.002(b), Natural Resources Code, is amended to read as follows:

(b) An entity may apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. An entity may not submit an application under this section before September 1, 2018. The application must be accompanied by:

(1) a certificate from a qualified independent engineer that the project is operational and meets the standards provided by Sections 120.001(2) (A), (B), and (C); and

(2) a fee payable to the commission.

SECTION 5. Section 120.003(a), Natural Resources Code, is amended to read as follows:

(a) An entity that applies to the commission under Section 120.002 for a certification that a project operated by the entity meets the requirements for a clean energy project is responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project complies with the requirements of Section 171.652(b) (4), Tax ~~[490.352(b) (4), Government]~~ Code.

SECTION 6. Section 120.004(b), Natural Resources Code, is amended to read as follows:

(b) The commission may not issue a certificate of compliance for more than three clean energy projects. Not more than one of the clean energy projects may be a natural gas project.

SECTION 7. Not later than January 1, 2014, the comptroller of public accounts shall adopt rules necessary to implement Subchapter L, Chapter 171, Tax Code, as redesignated and amended by this Act.

SECTION 8. Not later than January 1, 2014, the Texas Commission on Environmental Quality shall adopt rules as necessary to implement the change in law made by this Act to Section 382.003,

Health and Safety Code.

SECTION 9. The Railroad Commission of Texas may adopt rules as necessary to implement the change in law made by this Act to Section 120.001, Natural Resources Code.

SECTION 10. The changes in law made by this Act do not apply to a clean energy project that includes a precombustion integrated gasification combined cycle technology with carbon capture and was selected by the United States Department of Energy for a Clean Coal Power Initiative award before February 1, 2010. A clean energy project that includes a precombustion integrated gasification combined cycle technology with carbon capture and was selected by the United States Department of Energy for a Clean Coal Power Initiative award before February 1, 2010, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2446 was passed by the House on May 7, 2013, by the following vote: Yeas 120, Nays 11, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2446 was passed by the Senate on May 22, 2013, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____
Date

Governor

S.B. No. 1727

AN ACT

relating to the use of the Texas emissions reduction plan fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.051, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a) ~~[386.252(a)(5)]~~;

(7) a health effects study as provided by Section 386.252(a) ~~[386.252(a)(7)]~~;

(8) air quality planning activities as provided by Section 386.252(a) ~~[386.252(a)(8)]~~; ~~[and]~~

(9) a contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a)(14);

(10) the clean fleet program established under Chapter 392;

(11) the alternative fueling facilities program established under Chapter 393;

(12) the natural gas vehicle grant program and clean transportation triangle program established under Chapter 394;

(13) other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or affected county;

(14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions; and

(15) the drayage truck incentive program established under Subchapter D-1 ~~[386.252(a)(9)]~~.

(b-1) Under the plan, the commission may establish and administer other programs, including other grants or funding programs, as determined by the commission to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052. The commission may apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or the commission may establish separate criteria and requirements as necessary to achieve the commission's objectives. The additional programs shall be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state

funds, the awarding and administration of grants and contracts, and achieving reductions in ozone precursors or particulate matter. Under this subsection, the commission may place a priority on programs that address the following goals:

(1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives, and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas; and

(2) reduction of emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards.

SECTION 2. Subchapter B, Chapter 386, Health and Safety Code, is amended by adding Section 386.0515 to read as follows:

Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION PROJECTS. (a) In this section, "agricultural product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

(1) a nonattainment area;
(2) an affected county;
(3) a destination inside the clean transportation triangle; or
(4) a county adjacent to a county described by Subdivision (2) or that contains an area described by Subdivision (1) or (3).

(b) Notwithstanding other eligibility requirements, the commission shall by rule or policy provide specific eligibility requirements under the Texas Clean Fleet Program established under Chapter 392 and under the Texas natural gas vehicle grant program established under Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for projects relating to agricultural product transportation.

(c) The determining factor for eligibility for participation in a program established under Chapter 392 or Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for a project relating to agricultural product transportation is the overall accumulative net reduction in emissions of oxides of nitrogen in a nonattainment area, an affected county, or the clean transportation triangle.

SECTION 3. Subsection (b), Section 386.058, Health and Safety Code, is amended to read as follows:

(b) The governor shall appoint to the advisory board:
(1) a representative of the trucking industry;
(2) a representative of the air conditioning manufacturing industry;
(3) a representative of the electric utility industry;
(4) a representative of regional transportation; and
(5) a representative of the nonprofit organization described by Section 387.002 [386.252(a)(2)].

SECTION 4. Section 386.104, Health and Safety Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) The commission may establish minimum percentage reduction standards alternative to the standards established under Subsection (f) as an incentive for the conversion of heavy-duty diesel on-road vehicle engines or non-road engines to operate under a dual-fuel configuration that uses natural gas and diesel fuels through an alternative fuel conversion system certified by the United States Environmental Protection Agency or the California Air Resources Board. In determining the emissions rate of the

converted vehicle and engine to compute the emissions reductions that can be attributed to the conversion system, the commission may take into account whether the emissions certification requirements for the conversion system prevent fully accounting for the emissions reductions. If the commission determines it to be necessary and appropriate, the commission may consider under this subsection certified engine test information that demonstrates reductions of emissions of nitrogen oxides and other pollutants and other information to verify the emissions reductions.

SECTION 5. Section 386.106, Health and Safety Code, is amended to read as follows:

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the [as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$15,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds \$15,000 per ton.

~~[(b)]~~ The commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) [(c)] The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(c) [(d)] In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

SECTION 6. Sections 386.152 and 386.153, Health and Safety Code, are amended to read as follows:

Sec. 386.152. ~~[COMPTROLLER AND]~~ COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The ~~[comptroller and the]~~ commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease ~~[, according to the schedule provided by Section 386.153,]~~ of new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or electric drives [that are certified by the United States Environmental Protection Agency to meet an emissions standard that is at least as stringent as those provided by Section 386.153] for a purchaser or lessee who agrees to register ~~[the vehicle in this state]~~ and ~~[to]~~ operate the vehicle in this state for a minimum period of time to be established by the commission ~~[not less than 75 percent of the vehicle's annual mileage].~~

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE REQUIREMENTS [SCHEDULE]. (a) A new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum

gas is eligible for a \$2,500 incentive if the vehicle:

- (1) has four wheels;
 - (2) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;
 - (3) was manufactured for use primarily on public streets, roads, and highways;
 - (4) is rated at not more than 9,600 pounds unloaded vehicle weight;
 - (5) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency;
 - (6) has, as applicable, a:
 - (A) compressed natural gas fuel system that complies with the:
 - (i) 2013 NFPA 52 Vehicular Gaseous Fuel Systems Code; and
 - (ii) American National Standard for Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or
 - (B) liquefied petroleum gas fuel system that complies with:
 - (i) the 2011 NFPA 58 Liquefied Petroleum Gas Code; and
 - (ii) Section VII of the 2013 ASME Boiler and Pressure Vessel Code; and
 - (7) was acquired on or after September 1, 2013, or a later date established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.
- (b) If the commission determines that an updated version of a code or standard described by Subdivision (a) (6) is more stringent than the version of the code or standard described by Subdivision (a) (6), the commission by rule may provide that a vehicle for which a person applies for an incentive under Subsection (a) is eligible for the incentive only if the vehicle complies with the updated version of the code or standard.
- (b-1) The incentive under Subsection (a) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013.
- (c) A new light-duty motor vehicle powered by electric drive is eligible for a \$2,500 incentive if the vehicle:
- (1) has four wheels;
 - (2) was manufactured for use primarily on public streets, roads, and highways;
 - (3) has not been modified from the original manufacturer's specifications;
 - (4) is rated at not more than 8,500 pounds unloaded vehicle weight;
 - (5) has a maximum speed capability of at least 55 miles per hour;
 - (6) is propelled to a significant extent by an electric motor that draws electricity from a battery that:
 - (A) has a capacity of not less than four kilowatt hours; and
 - (B) is capable of being recharged from an external source of electricity; and
 - (7) was acquired on or after September 1, 2013, or a

later date as established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(d) The incentive under Subsection (c) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013. [A new light-duty motor vehicle is eligible for an incentive according to the following schedule:

[Incentive emissions standard and incentive amount
[Model year 2003-2007
[Bin 4 \$1,250
[Bin 3 \$2,225
[Bin 2 \$3,750
[Bin 1 \$5,000]

SECTION 7. Section 386.156, Health and Safety Code, is amended to read as follows:

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 each year the commission shall publish ~~[and provide to the comptroller]~~ a list of ~~[the]~~ new model motor vehicles eligible for inclusion in an incentive under this subchapter as listed for the commission under Section 386.155. The commission shall publish ~~[and provide to the comptroller]~~ supplements to that list as necessary to include additional new vehicle models ~~[listed in a supplement to the original list provided by a manufacturer under Section 386.155].~~

(b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~ the list of eligible motor vehicles on the commission's Internet website ~~[to all new motor vehicle dealers and leasing agents in this state].~~

SECTION 8. Subsections (a) and (c), Section 386.158, Health and Safety Code, are amended to read as follows:

(a) A person who purchases or leases a new light-duty motor vehicle described by Section 386.153 and ~~[that has been]~~ listed under Section 386.156(a) ~~[386.155]~~ is eligible to apply for an incentive under this subchapter.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle who is eligible to apply for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the commission ~~[comptroller]~~.

SECTION 9. Section 386.160, Health and Safety Code, is amended to read as follows:

Sec. 386.160. COMMISSION ~~[COMPTROLLER]~~ TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission ~~[comptroller]~~ by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this subchapter.

(b) The commission ~~[comptroller]~~ shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the commission ~~[comptroller]~~ for an incentive payment under this subchapter. The commission ~~[comptroller]~~ shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) In addition to other forms developed and published under this section, the commission ~~[comptroller]~~ shall develop and publish a verification form by which, with information provided by the dealer or leasing agent, the commission ~~[comptroller]~~ can verify the sale of a vehicle covered by this subchapter. The verification form shall include at least the name of the purchaser, the vehicle identification number of the vehicle involved, the date

of the purchase, and the name of the new motor dealer or leasing agent involved in the transaction. At the time of sale or lease of a vehicle eligible for an incentive under this subchapter, the dealer or leasing agent shall complete the verification form supplied to the dealer by the commission ~~[comptroller]~~. The purchaser or lessee shall include the completed verification form as part of the purchaser's application for an incentive. The dealer shall maintain a copy of the completed verification form for at least two years from the date of the transaction.

SECTION 10. The heading to Section 386.161, Health and Safety Code, is amended to read as follows:

Sec. 386.161. ~~[REPORT TO COMMISSION,]~~ SUSPENSION OF PURCHASE OR LEASE INCENTIVES.

SECTION 11. Subsections (b), (c), and (d), Section 386.161, Health and Safety Code, are amended to read as follows:

(b) If the balance available for motor vehicle purchase or lease incentives falls below 15 percent of the total allocated for the incentives during that fiscal year, the commission ~~[comptroller]~~ by order shall suspend the incentives until the date the comptroller can certify that the balance available in the fund for incentives is an amount adequate to resume the incentives or the beginning of the next fiscal year, whichever is earlier. If the commission ~~[comptroller]~~ suspends the incentives, the commission ~~[comptroller]~~ shall immediately notify ~~[the commission and]~~ all new motor vehicle dealers and leasing agents that the incentives have been suspended.

(c) The commission ~~[comptroller]~~ shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The commission ~~[comptroller]~~ may provide for issuing verification numbers over the telephone line.

(d) Reliance by a dealer or leasing agent on information provided by the ~~[comptroller or]~~ commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

SECTION 12. Subchapter D, Chapter 386, Health and Safety Code, is amended by adding Section 386.162 to read as follows:

Sec. 386.162. EXPIRATION. This subchapter expires August 31, 2015.

SECTION 13. Chapter 386, Health and Safety Code, is amended by adding Subchapter D-1 to read as follows:

SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

Sec. 386.181. DEFINITION; RULES. (a) In this subchapter, "drayage truck" means a truck that transports a load to or from a seaport or rail yard.

(b) The commission may include more specific definitions in the rules or guidelines developed to implement the program established by this subchapter in order to reduce emissions in and around seaports in a nonattainment area.

Sec. 386.182. COMMISSION DUTIES. (a) The commission shall develop a purchase incentive program to encourage owners to replace drayage trucks with pre-2007 model year engines with newer drayage trucks and shall adopt guidelines necessary to implement the program.

(b) The commission by rule shall establish criteria for the models of drayage trucks that are eligible for inclusion in an incentive program under this subchapter. The guidelines must provide that a drayage truck owner is not eligible for an incentive payment under this subchapter unless the truck being replaced contains a pre-2007 model year engine and the replacement truck's engine is from model year 2010 or later as determined by the commission and that the truck operates at a seaport or rail yard.

Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck that under the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the truck in this state;

(B) operate the truck in and within a maximum distance established by the commission of a seaport or rail yard in a nonattainment area of this state for not less than 50 percent of the vehicle's annual mileage or hours of operation, as determined by the commission; and

(C) permanently remove a pre-2007 drayage truck containing a pre-2007 engine owned by the person from operation in a nonattainment area of this state by destroying the engine and scrapping the truck after the purchase of the new truck in accordance with guidelines established by the commission.

(b) To receive money under an incentive program provided by this subchapter, the purchaser of a drayage truck eligible for inclusion in the program must apply for the incentive in the manner provided by law, rule, or guideline of the commission.

(c) Not more than one incentive may be provided for each drayage truck purchased.

(d) An incentive provided under this subchapter may be used to fund not more than 80 percent of the purchase price of the drayage truck.

(e) The commission shall establish procedures to verify that a person who receives an incentive:

(1) has operated in a seaport or rail yard and owned or leased the drayage truck to be replaced for at least two years prior to receiving the grant; and

(2) permanently destroys the engine and scraps the drayage truck that contained the pre-2007 engine owned or leased by the person, in accordance with guidelines established by the commission, after the purchase of the new truck.

(f) The commission may modify this program to improve its effectiveness or further the goals of Subchapter B.

SECTION 14. The heading to Subchapter E, Chapter 386, Health and Safety Code, is amended to read as follows:

SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER ENERGY EFFICIENCY PROGRAMS ~~[GRANT PROGRAM]~~

SECTION 15. Section 386.205, Health and Safety Code, is amended to read as follows:

Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER ~~[STATE]~~ ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from ~~[the]~~ programs implemented by the state energy conservation office ~~[under this subchapter]~~ and from programs ~~[those]~~ implemented under Section 39.905, Utilities Code.

SECTION 16. Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan. Money appropriated to the commission to be used for the programs under Section 386.051(b) [and the total appropriation] shall be allocated as follows:

(1) not more than four percent may be used for the clean school bus program under Chapter 390;

(2) not more than three percent ~~[not more than 10 percent may be used for on-road diesel purchase or lease incentives;~~

~~[(3) a specified amount]~~ may be used for the new technology implementation grant program under Chapter 391, from which at least \$1 million will ~~[a defined amount may]~~ be set aside for electricity storage projects related to renewable energy;

(3) ~~[(4)]~~ five percent shall be used for the clean fleet program under Chapter 392;

(4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;

(5) not less than 16 percent shall be used for the Texas natural gas vehicle grant program under Chapter 394;

(6) not more than five percent may be used to provide grants for natural gas fueling stations under the clean transportation triangle program under Section 394.010;

(7) not more than five percent may be used for the Texas alternative fueling facilities program under Chapter 393;

(8) a specified amount may be used ~~[is to be allocated]~~ each year to support research related to air quality as provided by Chapter 387;

(9) not more than ~~[(7) up to]~~ \$200,000 may be used ~~[is allocated]~~ for a health effects study;

(10) ~~[(8) up to]~~ \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties;

(11) at least \$4 million and up to four percent to a maximum of \$7 million, whichever is greater, is allocated to the commission for administrative costs;

(12) at least two percent and up to five percent of the fund is to be used by the commission for the drayage truck incentive program established under Subchapter D-1;

(13) not more than five percent may be used for the light-duty motor vehicle purchase or lease incentive program established under Subchapter D;

(14) ~~[(9)]~~ not more than \$216,000 is allocated to the commission to contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan;

(15) ~~[(10) not more than \$3,400,000 is allocated to the commission for administrative costs incurred by the commission;~~

~~[(11)]~~ 1.5 percent of the money in the fund is allocated for administrative costs incurred by the laboratory; and

(16) ~~[(12)]~~ the balance is to be used by ~~[is allocated to]~~ the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

SECTION 17. Section 386.252, Health and Safety Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (e-1) to read as follows:

(b) The commission may allocate unexpended money designated for the clean fleet program under Chapter 392 to other programs

described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.

(c) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program under Chapter 393 to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.

(d) The commission may reallocate money designated for the Texas natural gas vehicle grant program under Chapter 394 to other programs described under Subsection (a) if:

(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for that program will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program would resolve the noncompliance.

(e) Under Subsection (d), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

(e-1) Money [money] allocated under Subsection (a) to a particular program may be used for another program under the plan as determined by the commission.

~~[(e) Money in the fund may be allocated to the clean school bus program only if:~~

~~[(1) the money is available for that purpose after money is allocated for the other purposes of the fund as required by the state implementation plan; or~~

~~[(2) the amount of money deposited to the credit of the fund in a state fiscal year exceeds the amount the comptroller's biennial revenue estimate shows as the comptroller's estimated amount to be deposited to the credit of the fund in that year.~~

~~[(d) The commission may allocate unexpended money designated for the clean fleet program to other programs described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.~~

~~[(e) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.]~~

SECTION 18. Subsection (f), Section 386.252, Health and Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(f) Money in the fund may be used by the commission for programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may be appropriated for those programs [Notwithstanding Subsection (a), the commission may reallocate money in the fund if:

[(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 394 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

[(2) the commission finds that the reallocation of some or all of the funding for the program established under Chapter 394 would resolve the noncompliance].

SECTION 19. Section 386.252, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) If the legislature does not specify amounts or percentages from the total appropriation to the commission to be

allocated under Subsection (a) or (f), the commission shall determine the amounts of the total appropriation to be allocated under each of those subsections, such that the total appropriation is expended while maximizing emissions reductions ~~[Under Subsection (f), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance].~~

(h) Subject to the limitations outlined in this section and any additional limitations placed on the use of the appropriated funds, money allocated under this section to a particular program may be used for another program under the plan as determined by the commission.

SECTION 20. Section 391.002, Health and Safety Code, is amended to read as follows:

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. The commission may establish a minimum capital expenditure threshold for projects under Subsection (b)(2). Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

(b) Projects that may be considered for a grant under the program include:

(1) advanced clean energy projects, as defined by Section 382.003;

(2) new technology projects that reduce emissions of regulated pollutants from point sources ~~[and involve capital expenditures that exceed \$500 million]; and~~

(3) electricity storage projects related to renewable energy, including projects to store electricity produced from wind and solar generation that provide efficient means of making the stored energy available during periods of peak energy use.

SECTION 21. Subsection (a), Section 392.007, Health and Safety Code, is amended to read as follows:

(a) The amount the commission shall award for each vehicle being replaced is up to ~~+~~

~~[(1)]~~ 80 percent, as determined by the commission, of the total [incremental] cost for replacement of a heavy-duty or light-duty diesel engine ~~+~~

~~[(A)] manufactured prior to implementation of federal or California emission standards; and~~

~~[(B)] not certified to meet a specific emission level by either the United States Environmental Protection Agency or the California Air Resources Board;~~

~~[(2)] 70 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 1990 through 1997;~~

~~[(3)] 60 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 1998 through 2003;~~

~~[(4)] 50 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 2004 and later;~~

~~[(5)] 80 percent of the incremental cost for replacement of a light-duty diesel vehicle;~~

~~[(A)] manufactured prior to the implementation of certification requirements; and~~

~~[(B)] not certified to meet either mandatory or~~

~~voluntary emission certification standards;~~

~~[(6) 70 percent of the incremental cost for replacement of a light-duty diesel vehicle certified to meet federal Tier 1 emission standards phased in between 1994 and 1997, and~~

~~[(7) 60 percent of the incremental cost for replacement of a light-duty diesel vehicle certified to meet federal Tier 2 emission standards phased in between 2004 and 2009].~~

SECTION 22. Subsection (a), Section 394.007, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount up to ~~[between 60 and]~~ 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

SECTION 23. Section 394.010, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsection (f-1) to read as follows:

(a) To ensure that natural gas vehicles purchased, leased, or otherwise commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, the commission shall award grants to support the development of a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth, and in nonattainment areas and affected counties of the state. In awarding the grants, the commission shall provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas, and in nonattainment areas and affected counties of the state, to enable a natural gas vehicle to travel in those areas ~~[along that triangular area]~~ relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by the commission; and

(4) a listing, to be maintained by the commission and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) The commission may not award more than ~~+~~

~~[(1) three station grants to any entity; or~~

~~[(2)] one grant for each station.~~

(c) Grants awarded under this section may not exceed:

(1) \$400,000 ~~[\$100,000]~~ for a compressed natural gas station;

(2) \$400,000 ~~[\$250,000]~~ for a liquefied natural gas station; or

(3) \$600,000 ~~[\$400,000]~~ for a station providing both liquefied and compressed natural gas.

(d) Stations funded by grants under this section must be publicly accessible ~~[and located not more than three miles from an~~

~~interstate highway system~~]. The commission shall give preference to:

(1) stations providing both liquefied natural gas and compressed natural gas at a single location; ~~and~~

(2) stations located not more than one mile from an interstate highway system; and

(3) stations located in the triangular area between the Houston, San Antonio, and Dallas-Fort Worth areas.

(f-1) An application for a grant under this section must include a certification that the applicant complies with laws, rules, guidelines, and requirements applicable to taxation of fuel provided by the applicant at each fueling facility owned or operated by the applicant. The commission may terminate a grant awarded under this section without further obligation to the grant recipient if the commission determines that the recipient did not comply with a law, rule, guideline, or requirement described by this subsection. This subsection does not create a cause of action to contest an application or award of a grant.

SECTION 24. Section 393.006, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 393.006. AMOUNT OF GRANT. For each eligible facility for which a recipient is awarded a grant under the program, the commission shall award the grant in an amount equal to the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission to construct, reconstruct, or acquire the facility; or

(2) \$600,000 ~~[\$500,000]~~.

SECTION 25. The following provisions are repealed:

(1) Subsection (c), Section 386.051, Health and Safety Code;

(2) Subdivision (1), Section 386.151, Health and Safety Code;

(3) Section 386.154, Health and Safety Code;

(4) Subsection (a), Section 386.161, Health and Safety Code;

(5) Sections 386.201, 386.202, and 386.203, Health and Safety Code;

(6) Section 386.204, Health and Safety Code;

(7) Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapters 589 (Senate Bill No. 20) and 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011;

(8) Subsection (f), Section 386.252, Health and Safety Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd Legislature, Regular Session, 2011; and

(9) Chapters 393 and 394, Health and Safety Code, as amended by Chapter 589 (Senate Bill No. 20), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 26. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1727 passed the Senate on May 2, 2013, by the following vote: Yeas 29, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 28, Nays 2, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1727 passed the House, with amendments, on May 21, 2013, by the following vote: Yeas 107, Nays 39, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor